

ORDINANCE NO. 1954

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UPLAND, CALIFORNIA, AMENDING UPLAND MUNICIPAL CODE CHAPTER 2.02 (CITY COUNCIL) AND UPLAND MUNICIPAL CODE SECTION 2.02.100 (BY-DISTRICT ELECTIONS), TO AMEND RESIDENCY REQUIREMENTS AND ESTABLISH PROOF OF RESIDENCY REQUIREMENTS FOR CITY COUNCIL CANDIDATES AND MEMBERS

WHEREAS, the Upland Municipal Code currently has only very limited residency requirements for City Council candidates and sitting City Councilmembers as set forth in Upland Municipal Code section 2.02.100, subdivision (B), which requires each member of the Upland City Council be a resident of the council district from which the member is nominated at the time the member is nominated, elected, and throughout that member's term of office and allows the mayor to be a resident of any city council district at the time of nomination and election; and

WHEREAS, the Upland Municipal Code does not currently have requirements regarding the appropriate documentation to establish proof of residency for purposes of the residency requirements set forth in Upland Municipal Code section 2.02.100, subdivision (B); and

WHEREAS, the City Council desires to amend Upland Municipal Code section 2.02.100, subdivision (B), to establish a 30-day pre-filing residency requirement; and

WHEREAS, the City Council finds that a 30-day pre-filing residency requirement is necessary and convenient to accommodate the needs of election officials in their task of timely verification of the candidate's true residence prior to the preparation and distribution of ballots; and

WHEREAS, in addition to the foregoing, the City Council finds that the proof of residency requirements set forth in this Ordinance are necessary and convenient to ensure compliance with the residency requirements set forth in Upland Municipal Code section 2.02.100, subdivision (B).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UPLAND DOES ORDAIN AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are hereby incorporated herein by this reference.

Section 2. Amendment of Section 2.02.100 (B). Section 2.02.100 (B) of Chapter 2.02 of Title 2 of the Upland Municipal Code is hereby amended to read in its entirety as follows:

"2.02.100 By-district elections.

B. Residency in Districts. Except for the directly elected mayor, each member of the city council must be and remain a resident of the council district from

which the member is nominated at least thirty (30) days prior to the time the member is nominated, elected, and throughout that member's term of office. In the event any member of the city council ceases to be a resident of the district from which the member was nominated and elected or, in the case of an appointee, the member ceases to be a resident of the district the member was appointed to represent, the office shall immediately become vacant and shall be filled in the manner provided by Section 36512 of the Government Code, as may be amended from time to time. Notwithstanding the above, if a member of the city council ceases to be a resident of the district solely because of a change in the boundaries as provided herein, the member shall not lose office during that term by reason of such change. The mayor, may reside in any district within the city and shall be elected by the voters city-wide; however, the mayor must be and remain a resident of the City at least thirty (30) days prior to the time the mayor is nominated, elected, and throughout the mayor's term of office. All members of the city council must abide by the proof of residency requirements set forth in Sections 2.02.110 through 2.02.150 of the Upland Municipal Code."

Section 3. Addition of Section 2.02.110. A new Section 2.02.110 is hereby added to Chapter 2.02 of Title 2 of the Upland Municipal Code to read in its entirety as follows:

"2.02.110 Proof of residency-Candidates.

A. Proof of Residency. In order to ensure a City Council candidate resides in the district for which Council seat he/she is running, the candidate must provide the following additional information to verify their 30 day residency requirement:

1. Proof of Home Ownership / Rental Property. Proof of home ownership as evidenced by providing the following: 1a) a copy of a Grant Deed; 1b) a mortgage payment billing statement verifying the address; or 1c) any other document that can be used to verify home ownership and residency of the property; and 2a) evidence of a homeowner's property tax exemption filed with the San Bernardino County Assessor for proof that the home is the primary residence. If a candidate does not have a tax exemption on file they must submit an affidavit signed, under penalty of perjury, by the candidate verifying that the home is the candidate's primary residence; or, if the home ownership is in the name of a person other than the candidate, or in the name of a legal entity, such as a trust, partnership or corporation, the candidate must submit an affidavit signed, under penalty of perjury, by the homeowner or authorized legal representative of the entity verifying the candidate is living in the home as his/her primary residence.

OR

If the residence is rented or leased by the candidate, the candidate must provide proof of residence by providing a signed copy of a lease or rental

agreement. If a candidate is living at a residence without a lease/rental agreement and whose name otherwise does not appear in the proof of home ownership, the candidate must have the landlord/property owner sign an affidavit, under penalty of perjury, verifying the candidate's residency in landlord's/property owner's property.

2. Proof of Motor Vehicle Registration. A copy of any motor vehicles registered to the candidate for the residency claimed or proof of a valid California Driver's License showing their address on their license is consistent with the address shown on their nomination papers. If the residence address on either the Driver's License or auto registration is in the process of being changed, the candidate must provide a document from the California Department of Motor Vehicles (DMV14 form) verifying the change is in process. If a candidate does not own an automobile or does not have a California Driver's License, the candidate must submit any other State of California issued identification showing their address on the identification document is consistent with the address shown on their nomination papers.

3. Utility Bill. A utility bill in the candidate's name showing that the service address is consistent with the address in the candidate's nomination papers. In the event a utility bill has not been generated, a letter from an authorized representative of the utility provider stating that an account has been opened in the candidate's name shall suffice. If there is an agreement with a landlord or other legal entity, as verified by a rental agreement or lease agreement that the landlord or other legal entity shall pay the utility bill, the candidate must submit an affidavit signed, under penalty of perjury, by the landlord or the other legal entity, stating the responsibility for paying the utility bill.

4. Affidavit. The candidate must sign an affidavit, under penalty of perjury, verifying residency.

B. Failure to Provide Documents. Failure to provide any of the above-required documents shall disqualify a candidate from meeting the City Council residency requirements set forth in Section 2.02.100 of the Upland Municipal Code. Willfully submitting false, forged, altered documents or coercing or unduly influencing persons providing affidavit documents shall also disqualify candidates and constitute a misdemeanor violation in addition to any other legal remedy available to enforce a similar fraudulent act."

Section 4. Addition of Section 2.02.120. A new Section 2.02.120 is hereby added to Chapter 2.02 of Title 2 of the Upland Municipal Code to read in its entirety as follows:

"2.02.120 Verification of residency and certification-Candidates.

Candidates are required to file all the documents specified in Section 2.02.110 of the Upland Municipal Code with the Upland City Clerk's office for verification

no earlier than the first day of the candidate filing period and no later than closing date of the filing period as it relates to candidates running for a City Council seat. The City Clerk shall review and verify that the required information is correct and meets all the requirements. The City Clerk shall diligently work to review and verify all residency documents submitted and shall complete the review and verification of the candidate's residency documents no later than five (5) calendar days from receipt. The City Clerk shall then do one of the following:

A. If the documents meet all requirements to demonstrate residency , the City Clerk's office shall certify that residency requirements have been met and shall mail a letter to the San Bernardino County Registrar of Voter's office and to the candidate so stating;

B. If any deficiencies are discovered in the documents provided or certain documents are missing, the City Clerk's office shall send a letter to the candidate showing the specific deficiency(ies) or missing document(s). The candidate shall have until the closing date to file nomination papers to correct the deficiencies and shall re-submit the required documents for verification to the City Clerk;

C. If the candidate fails to demonstrate residency by complete verification of all required documents within the prescribed time limits, or the resubmitted documents do not demonstrate residency, the City Clerk's office shall mail a letter to the candidate advising them that they have failed to meet the requirements; or

D. If the resubmitted documents by the candidate meet all requirements to demonstrate residency, the City Clerk's office shall certify that residency requirements have been met and shall mail a letter to the San Bernardino County Registrar of Voter's office and to the candidate so stating."

Section 5. Addition of Section 2.02.130. A new Section 2.02.130 is hereby added to Chapter 2.02 of Title 2 of the Upland Municipal Code to read in its entirety as follows:

"2.02.130 Annual verification of residency-City Councilmembers.

A. Proof of Residency. To ensure that City Councilmembers meet the residency requirements set forth in Section 2.02.100 of the Upland Municipal Code throughout their entire term in office, each Councilmember's residency must be verified annually for each year in office. Councilmembers are required to submit the following documents to the City Clerk during the last 31 calendar days of the year (December 1st through December 31st):

1. Proof of Home Ownership / Rental Property. Proof of home ownership as evidenced by providing the following: 1a) a copy of a Grant Deed; 1b) a mortgage payment billing statement verifying the address; or 1c)

any other document that can be used to verify home ownership and residency of the property; and 2a) evidence of a homeowner's property tax exemption filed with the San Bernardino County Assessor for proof that the home is the primary residence. If a Councilmember does not have a tax exemption on file they must submit an affidavit signed, under penalty of perjury, by the Councilmember verifying that the home is the candidate's primary residence; or, if the home ownership is in the name of a person other than the Councilmember, or in the name of a legal entity, such as a trust, partnership or corporation, the Councilmember must submit an affidavit signed, under penalty of perjury, by the homeowner or authorized legal representative of the entity verifying the Councilmember is living in the home as his/her primary residence.

OR

If the residence is rented or leased by the Councilmember, the Councilmember must provide proof of residence by providing a signed copy of a lease or rental agreement. If a Councilmember is living at a residence without a lease/rental agreement and whose name otherwise does not appear in the proof of home ownership, the Councilmember must have landlord/property owner sign an affidavit, under penalty of perjury, verifying the Councilmember's residency in landlord's/property owner's property.

2. Proof of Motor Vehicle Registration. A copy of any motor vehicles registered to the Councilmember for the residency claimed or proof of a valid California Driver's License showing their address on their license is consistent with the address shown on their nomination papers. If the residence address on either the Driver's License or auto registration is in the process of being changed, the Councilmember must provide a document from the California Department of Motor Vehicles (DMV14 form) verifying the change is in process. If a Councilmember does not own an automobile or does not have a California Driver's License, the Councilmember must submit any other State of California issued identification showing their address on the identification document is consistent with the address shown on their original nomination papers.

3. Utility Bill. A utility bill in the Councilmember's name showing that the service address is consistent with the address in the Councilmember's original nomination papers. In the event a utility bill has not been generated, a letter from an authorized representative of the utility provider stating that an account has been opened in the Councilmember's name shall suffice. If there is an agreement with a landlord or other legal entity, as verified by a rental agreement or lease agreement that the landlord or other legal entity shall pay the utility bill, the Councilmember must submit an affidavit signed, under penalty of perjury, by the landlord or the other legal entity, stating the responsibility for paying the utility bill.

4. Affidavit. The Councilmember must sign an affidavit, under penalty of perjury, verifying residency.

B. Relocation. In the event that a Councilmember moves to a new residence in the district after the filing of the previous affidavit, the Councilmember must confirm such new residence, within sixty (60) days of moving, using items 1 through 4 of subdivision (A), for the new residence address. Incumbent Councilmembers who have not relocated since the residency information required was last provided may comply by supplying a copy of a current California driver's license or, if a Councilmember does not have a California Driver's License, any other State of California issued identification, and an affidavit, signed under penalty of perjury, that they have not relocated and all previously supplied information remains true and correct."

C. Failure to Provide Documents. Failure to provide any of the above-required documents shall disqualify a candidate from meeting the City Council residency requirements set forth in Section 2.02.100 of the Upland Municipal Code. Willfully submitting false, forged, altered documents or coercing or unduly influencing persons providing affidavit documents shall also disqualify candidates and constitute a misdemeanor violation in addition to any other legal remedy available to enforce a similar fraudulent act."

Section 6. Addition of Section 2.02.140. A new Section 2.02.140 is hereby added to Chapter 2.02 of Title 2 of the Upland Municipal Code to read in its entirety as follows:

"2.02.140 Investigation and enforcement of residency requirements.

Any fraudulent residency complaints shall be submitted to the City Attorney. The City Attorney shall refer all complaints to the San Bernardino County District Attorney. The San Bernardino County District Attorney shall have the discretion to investigate residency complaints and if sufficient evidence of fraud is found during the investigation, the District Attorney can elect to prosecute."

Section 7. Addition of Section 2.02.150. A new Section 2.02.150 is hereby added to Chapter 2.02 of Title 2 of the Upland Municipal Code to read in its entirety as follows:

"2.02.150 Residency requirements-Transparency.

The City Clerk shall maintain a record of the names, corresponding Council districts and all required supporting documents, consistent with applicable confidentiality laws, of all candidates that have been certified to meet the residency requirements at the City's website and shall make said record and documents available for inspection at the City Clerk's office during normal business hours. Any confidential information shall be redacted before the public record is made available for inspection, in accordance with the California Public Records Act. "

Section 8. Compliance with California Environmental Quality Act. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Further, if the activity is deemed a project this City Council finds that this Ordinance is exempt pursuant to Section 15061(b)(3) of the State CEQA Guidelines.

Section 9. Severability. If any section, subsection, subdivision, sentence, or clause or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, or phrases are declared unconstitutional, invalid, or ineffective.

Section 10. Effective Date. This Ordinance shall become effective thirty (30) days from its adoption.

Section 11. Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published in a newspaper of general circulation printed and published within the City of Upland, pursuant to all legal requirements.

PASSED, APPROVED, AND ADOPTED this 12th day of July, 2021.

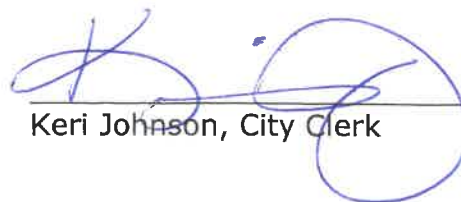


Bill Velto, Mayor

I, Keri Johnson, City Clerk of the City of Upland, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Upland held on the 28th day of June, 2021, and was adopted at a regular meeting of the City Council of the City of Upland on the 12th day of July, 2021, by the following roll call vote:

AYES: Mayor Velto, Councilmembers Zuniga, Elliott, Garcia, Maust
NOES: None
ABSENT: None
ABSTAINED: None

ATTEST:



Keri Johnson, City Clerk